

The Victims' Rights (Scotland) Regulations 2015 - Privacy Impact Assessment

1. Introduction

The purpose of this document is to report on and assess against any potential Privacy Impacts as a result of the implementation or use of The Victims' Rights (Scotland) Regulations 2015 ("the Regulations").

2. Document metadata

2.1 Name of Project: The Victims' Rights (Scotland) Regulations 2015.

2.2 Date of report – 27 October 2015

2.3 Author of report – Neil Watt - Criminal Justice Division – EU Criminal Justice Team.

2.4 Information Asset Owner (IAO) – Elspeth MacDonald, Deputy Director, Criminal Justice Division.

3. Description of the project

3.1 The Regulations transpose into Scots law the requirements of Council Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime and, for those Member States participating in Council Directive 2012/29/EU, replacing Council Framework Decision 2001/220/JHA.

The general objective of the Directive is to help ensure that all victims of crime, regardless of where they live in the EU:

- receive appropriate protection and support
- can participate in criminal proceedings; and
- are recognised and treated in a respectful, sensitive and professional manner.

The Directive requires us to put in place a specific legal framework to ensure individuals can clearly recognise their rights under the Directive.

Scotland already complies with the majority of the Directives' provisions through current legislation (such as the Victims and Witnesses Act 2014 – 'the 2014 Act') or operationally (for example through the provision of interpretation and translation).

The Regulations will complete our transposition by amending the 2014 Act to ensure that victims' rights and the obligations of competent authorities are fully enshrined in law, and by creating a new Victims' Code for Scotland setting out victims' rights clearly, simply and in one place.

Implementation of the provisions in the Regulations will fall to the Scottish Government, and a number of competent authorities as defined by the Regulations, including Police Scotland, the Lord Advocate, the Scottish Court and Tribunal Service, the Parole Board for Scotland and the Scottish Prison Service.

3.2 Describe the personal data to be processed.

Personal data about a victim in the following categories will be processed: Name, Alias, Sex, Nationality, Social Security Number, Date of Birth, Place of Birth, Address, Languages spoken and information about any protection measures imposed. Personal information about the release date of a person sentenced to a period of imprisonment or remand will also be processed.

3.3 Describe how this data will be processed:

The data will be gathered during the course of criminal investigations and court proceedings brought against an accused person. It will be accessed by competent authorities in line with current protocols. Information may also occasionally be shared with the appropriate authority of EU Member States. Within Scotland, data will be transmitted, stored, disposed of, owned and managed in line with current Integration of Scottish Criminal Justice Information Systems (ISCJIS) protocols or in line with current protocols for referral of victims to Victim Support Scotland (or other victim support organisations) and the Victim Notification Scheme. EU Member States are subject to the EU data protection Directive and thus a similar level of protection will be afforded to information supplied to them.

3.4 If this data is to be shared with internal or external partners, explain the legal basis for the sharing.

The Directive is EU law and provides the underpinning legal basis for the sharing. Section 18 of the Criminal Justice (Scotland) Act 2003 enables constables to disclose victims details, with the consent of the victim, to prescribed bodies. The Regulations create new section 3D to be added to the 2014 Act empowering competent authorities to pass the details of victims to victim support organisations. This information sharing power is still based on the consent of the data subject as it only applies where the victim requests a referral to these organisations.

4. Stakeholder analysis and consultation

4.1 List all the groups involved in the project, and state their interest.

Scottish Government officials: responsible for transposition of the EU Directive

Competent authorities: responsible for day to day implementation of the Regulations.

4.2 Detail the method used to consult with these groups when making the PIA.

A series of meetings used to consult with the competent authorities when making the PIA.

4.3 Discuss the means used to communicate the outcomes of the PIA with the stakeholder groups.

The PIA was shared with stakeholders as part of the package of documents associated with the draft Regulations.

5. Questions to identify privacy issues

5.1 Involvement of multiple organisations

- The Regulations will involve competent authorities victim support organisations and, occasionally, other partners from the wider EU.

5.2 Anonymity and pseudonymity

- The project does not require the matching of data sources together.

5.3 Technology

- There will be no new or additional information technologies that have substantial potential for privacy intrusion.

5.4 Identification methods

- Existing unique identifiers (Passport and National Insurance numbers) will be re-used.
- There will be no new or substantially changed identity authentication requirements that may be intrusive or onerous.

5.5 Personal data

- There will be no new or significant changes to the handling of types of personal data that may be of particular concern to individuals. Sensitive personal data on the accused's release date from prison may be shared with victims of crime. Personal data on 16 or 17 year olds may be shared with their parents or a person with parental responsibilities.
- There will be no new or significant changes to the handling of personal data about a large number of individuals.
- There will be no new or significantly changed consolidation, inter-linking, cross-referencing or matching of personal data from multiple sources.
- The project will not involve the linkage of personal data with data in other collections, or any significant change to existing data links or holdings.

5.6 Changes to data handling procedures

- There will be no new or changed data collection policies or practices that may be unclear or intrusive.

- There will be no changes to data quality assurance or processes and standards that may be unclear or unsatisfactory.
- There will be no new or changed data security access or disclosure arrangements that may be unclear or extensive.
- There will be no new or changed data retention arrangements that may be unclear or extensive.
- There will be no changes to the medium of disclosure for publicly available information in such a way that the data becomes more readily accessible than before.

5.7 Statutory exemptions/protection

- Section 29(1)(b) of the Data Protection Act 1988 provides that personal data processed “for the purposes of the apprehension or prosecution of offenders” are exempt from the first data protection principle (that data must be processed fairly and lawfully), except to the extent that it requires compliance with the conditions in Schedules 2 and 3 (which set out the conditions relevant to the processing of personal and sensitive personal data).
- Additionally, section 35(1) exempts personal information from the non-disclosure provision (as defined by section 27(3) of the DPA) where the disclosure is “required by or under any enactment, by any rule of law or by the order of the court”. As we are subject to (and transposing) EU law, by definition anything done under its power is allowed under the DPA. Additionally, section 35(2)(a) exempts personal data from the non-disclosure provisions where that disclosure is necessary “for the purpose, or in connection with any legal proceeding”.
- Where the data being processed is sensitive personal data, the exemptions do not go so far as to remove the requirement that at least one of the conditions in both Schedules 2 and Schedule 3 are met. In this case, the “administration of justice” condition in paragraph 5(a) of Schedule 2 and paragraph 7(1)(a) of Schedule 3 would appear to be clearly met. There is no need for consent from the data subjects.
- The project does not involve systematic disclosure of personal data to, or access by, third parties that are not subject to comparable privacy regulation.

5.8 Justification

- The project contributes to public security measures by enshrining rights and protections for victims in domestic legislation.
- The justification for the new data handling procedure is contained within the EU Directive and the policy note that accompanies the proposed regulations.

5.9 Other risks

- There are no risks to privacy not covered by the above questions.

6. Risks identified and appropriate solutions or mitigation actions proposed

Is the risk eliminated, reduced or accepted?

Risk	Solution or mitigation	Result
Sensitive personal data is being shared out with ISCJIS with Victim Support Scotland or EU justice partners	The Regulations do not propose to disclose personal data to, or access by, third parties that are not subject to EU or comparable privacy legislation.	Eliminate
Sensitive personal data is being transferred out with ISCJIS	Personal/sensitive data will be transferred securely, using normal secure processes, for example via police national network or recorded/international recorded delivery where appropriate.	Minimised
Sensitive personal data about an accused's release date from prison is shared with victims of crime	Personal/sensitive data will not be shared if there is a risk of harm to the accused. Checks will be made to ensure the victim of crime is entitled to the information.	Minimised

7. Incorporating Privacy Risks into planning

Explain how the risks and solutions or mitigation actions will be incorporated into the project/business plan, and how they will be monitored. There must be a named official responsible for addressing and monitoring each risk.

Risk	How risk will be incorporated into planning	Owner
Sensitive personal data is being shared out with ISCJIS with victim support organisations or EU justice partners	The risk will be incorporated into planning by ensuring that the Regulations identify that the information can only be shared with victim support organisations or with competent authorities in another EU Member State.	Neil Watt
Sensitive personal data is being transferred out with ISCJIS	The risk will be incorporated into planning by ensuring that information is shared using normal secure processes that are currently used for other data transfers, eg current exchanges between competent authorities and victim support organisations, or at a EU level, victims' statements about a crime.	Neil Watt
Sensitive personal data about an accused's release date from prison is shared with victims of crime	The risk will be incorporated into planning by ensuring that the checks and balances used in the current Victim Notification Scheme also extend to the new scheme.	Neil Watt

8. Authorisation and publication

The PIA report should be signed by your Information Asset Owner (IAO). The IAO will be the Deputy Director or Head of Division.

Before signing the PIA report, an IAO should ensure that she/he is satisfied that the impact assessment is robust, has addressed all the relevant issues and that appropriate actions have been taken.

By signing the PIA report, the IAO is confirming that the impact of applying the policy has been sufficiently assessed against the individuals' right to privacy.

The results of the impact assessment must be published in the eRDM with the phrase "Privacy Impact Assessment (PIA) report" and the name of the project or initiative in the title.

Details of any relevant information asset must be added to the Information Asset Register, with a note that a PIA has been conducted.

I confirm that the impact of applying the policy has been sufficiently assessed against the needs of the privacy duty:

Elspeth MacDonald Deputy Director Criminal Justice Division	Signed: Elspeth MacDonald Date: 27 October 2015
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